IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 8449 of 2005

Between:

Nanneboina Brahmanandam, S/o. Late Hanumaiah,
R/o. 2nd Lane 1st Cross Road, Lakshmipuram, Guntur City.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Rep. by District Collector,
Collectorate Buildings, Guntur.
2 The Revenue Divisional Officer, Guntur Division, Collectorate Compound,
Guntur.
3 Mandal Revenue Officer, Guntur Rural Mandal, Guntur.
4 Andhra Pradesh Wakf Board, Rep. by its Chief Executive Officer,
Opposite to Public Gardens, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring that the action of the respondents 1 to 4 in dispossessing the petitioner from his 3 acres 74 cents of and in Survey No. 721 situated at Nallapadu villlage in Guntur District without through due process of law and demolishing house in the said land and compound wall constructed around the said land is illegal, arbitrary and in violation of Article 300A of the Constitution of India and consequently to direct the respondents 1 to 4 to restore the possession of the above mentioned land to the petitioner and pay compensation for the house and compound wall demolished by the respondents and pass such other and necessary reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Counsel for the Petitioner : MR. D.V.REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE
Counsel for the Respondent No.4: Mr.S.M.Subani, Advocate

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.8449 OF 2005

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ORDER :

The petitioner claims to be the absolute owner of Ac.3.74 cents of land situated in Sy.No.721 of Nallapadu Village, Guntur District, having purchased the same under four different Registered Sale Deeds. It is stated that he has been cultivating the said land and he also constructed a house spending about Rs.5 lakhs. It is alleged that on 9-4-2005 the staff of the respondents 2 and 3 trespassed into the said land and demolished the house and compound wall claiming that the said land is the Wakf property and they have also erected a Board to that effect. Aggrieved by the said action, this writ petition is filed seeking a declaration that the action of the respondents in dispossessing the petitioner from the land in question is arbitrary and illegal and to direct the respondents 1 to 4 to restore the possession of the same to him and also to pay compensation for the house and compound wall which were demolished.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Standing Counsel for the 4th respondent – A.P. Wakf Board, at the outset, submitted that the property in question is a notified wakf property and the same was published as such in the A.P. Gazette, dated 28-6-1962. It is also stated that the said property is exclusively meant for the maintenance of the Asoorkhana including that of religious and pious purposes. The learned Standing Counsel, under instructions, states that the writ petitioner is an encroacher and therefore the third respondent – Mandal Revenue Officer having evicted him, handed over the possession to the Wakf Board to the Minority Welfare Officer, Guntur District vide proceedings dated 8-4-2005. The learned Standing Counsel has also placed before this Court the original Gazette, dated 28-6-1962.

In view of what has been stated by the learned Standing Counsel and since a prima facie case is made out to show that the property in question is a wakf property, the petitioner cannot maintain this writ petition without exhausting the alternative remedy as provided under Section 83 of the Wakf Act, 1995, (for short, 'the Act') which provides that any dispute, question or other matter relating to a wakf or wakf property shall be determined by a Tribunal constituted under the said Act. Hence, I am not inclined to express any opinion with regard to the rival claims made by the parties and it would be proper for the petitioner to institute appropriate proceedings before the Tribunal. However, the learned Counsel for the petitioner while placing reliance upon TULJARAM SINGH (Died) PER L.Rs. v. DISTRICT COLLECTOR, HYDERABAD contended that since the respondents failed to follow the specific procedure as prescribed under Sections 52 and 54 of the Wakf Act before dispossessing the petitioner from the land in question, notwithstanding the alternative remedy the petitioner is entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for restoration of possession as well as for award of compensation.

I do not find any merit in the said contention. The decision relied upon by the learned Counsel for the petitioner has no application at all to the facts on hand. In the said case, the land in question was taken possession much before the publication of the Notification under Section 4(1) of the Land Acquisition Act, 1894, but the petitioner

was not paid the compensation. In the facts and circumstances of the said case, this Court deprecated the action of the respondents in not paying the compensation within a reasonable time and allowed the writ petition with a direction to the respondents to pass an award within six months. That apart, the respondents were also directed to pay exemplary costs quantified at Rs.20,000/- to the petitioners and also to pay a sum of Rs.1,00,000/- towards damages for depriving the petitioners' right to enjoy the property for a period of about 15 years. The said decision rendered in the particular facts and circumstances has no application at all to the case on hand.

Since admittedly the dispute raised by the petitioner is triable by the Tribunal constituted under the Act, it is open to the petitioner to work out the said remedy and it is also open to him to urge that he was dispossessed in violation of the provisions of the Act. Hence, the matter does not deserve to be entertained under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed grating leave and liberty to the petitioner to work out the alternative remedy as available under the Act. No costs.

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26th April, 2005.

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To

1 The District Collector, Government of Andhra Pradesh, Rep. by District Collector, Collectorate Buildings, Guntur.
2 The Revenue Divisional Officer, Guntur Division, Collectorate Compound, Guntur.
3 The Mandal Revenue Officer, Guntur Rural Mandal, Guntur.
4 The Chief Executive Officer, Andhra Pradesh Wakf Board, Opposite to Public Gardens, Nampally, Hyderabad.

5. Two CCs to G.P. for Revenue, High Court of AP Bldgs, Hyderabad (OUT)

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